



Benelux Office for  
**Intellectual  
Property**

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY  
OPPOSITION DECISION  
N° 2017331  
of 27 October 2022**

**Opponent:** **Amdocs Development Ltd.**  
141 Omonia Avenue, The Maritime Centre, PO Box 50483  
3606 Limassol  
Cyprus

**Representative:** **Merkenbureau Knijff & Partners B.V.**  
Leeuwendseweg 12  
1382 LX Weesp  
Netherlands

**Invoked trademark 1: European Union trademark registration 15184252**

AMDOCS

**Invoked trademark 2: European Union trademark registration 16396608**



*against*

**Defendant:** **AMDAX Holding B.V.**  
Beursplein 5  
1012 JW Amsterdam  
Netherlands

**Representative:** **Markeys**  
Voortsweg 131  
7523 CD Enschede  
Netherlands

**Contested sign:** **Benelux trademark application 1444143**

AMDAX

**I. FACTS AND PROCEEDINGS****A. Facts**

1. On 3 June 2021, the defendant filed a Benelux trademark application for the verbal trademark AMDAX, for goods and services in classes 9 and 36. This application was processed under number 1444143 and was published on 9 July 2021.

2. On 7 September 2021, the opponent filed an opposition against the registration of the application. The opposition is based on the following earlier trademarks:

- European Union trademark registration 15184252 of the verbal trademark AMDOCS, filed on 4 March 2016 and registered on 13 July 2016 for goods and services in classes 9, 35 and 42;
- European Union trademark registration 1475573 of the verbal trademark AMDOCS, filed on 25 January 2000 and registered on 14 March 2001 for goods and services in classes 9, 16 and 42;
- European Union trademark registration 16396608 of the combined word/figurative trademark



filed on 23 February 2017 and registered on 25 September 2017 for goods and services in classes 9, 35 and 42.

3. During the proceedings, the defendant asked for proof of use. Since the opponent did not submit the requested proof of use, the opposition no longer concerns the second trademark invoked, since only proof of use was required for this trademark.

4. According to the register the opponent is the actual holder of the trademarks invoked.

5. The opposition is directed against all goods and services covered by the contested application and is based on all goods and services covered by the trademarks invoked.

6. The grounds for opposition are those laid down in article 2.14, (2)(a) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP").

7. The language of the proceedings is English.

**B. Proceedings**

8. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office") to the parties on 8 September 2021. During the administrative phase of the proceedings both parties filed arguments. As mentioned above, the defendant requested proof of use, to which the opponent did not respond (see paragraph 3). For the remainder the course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter: "IR"). The administrative phase was completed on 20 June 2022.

## **II. LEGAL GROUNDS AND ARGUMENTS OF THE PARTIES**

9. The opponent filed his opposition at the Office under article 2.14, (2)(a) BCIP, in accordance with the provisions of article 2.2ter, (1)(b) BCIP: the likelihood of confusion based on the identity or similarity of trademark and sign and of the goods or services concerned.

### **A. Opponent's arguments**

10. The opponent argues that the trademarks AMDOCS and AMDAX show significant visual similarities, with more than half of the letters in the signs being identical and in the same sequence. The small differences in the (number of) letters are not sufficient to exclude the visual similarity, particularly now that the marks have the same structure and the identical beginning AMD. Therefore, according to the opponent trademarks and sign are visually similar to a high degree.

11. Phonetically, the signs AMDOCS and AMDAX are also highly similar. They share the same sound and structure, and the number and sequence of its syllables are also the same. The beginning of both marks AMD is identical. Furthermore, the ending is also identical, because the letters CS and X are pronounced identically. The opponent argues that the only difference is in the letter O versus the letter A, but this difference will hardly be noticed when the marks are pronounced in its totality. Therefore, the signs are phonetically highly similar or almost identical.

12. The opponent states that the words AMDOCS and AMDAX have no meaning. For this reason, a conceptual comparison does not play a role in the comparison of the trademarks. Considering the above-mentioned phonetic and visual similarities between the marks, it must be concluded that the marks under comparison are similar to a high degree.

13. According to the opponent, the goods in class 9 of the contested sign are identical or similar to the goods in class 9 and the services of class 42 for which the trademarks invoked are registered. The opponent argues that the specification of the goods in class 9 of the contested sign, namely that the software only relates to cryptocurrency, does not mean that these goods are not similar to the goods and services of the trademarks invoked. Furthermore, the opponent argues that the services in class 36 of the contested sign are similar to part of the goods in class 9 and part of the services in class 35 of the trademarks invoked.

14. The opponent also states that AMDOCS is a well-known trademark and is famous in the field of software solutions. In order to substantiate this argument, the opponent refers to information on his website.

15. The opponent concludes that there exists a likelihood of confusion and requests that the Office refuses the contested sign and orders the defendant to bear the costs of the proceedings.

### **B. Defendant's arguments**

16. The defendant argues that the goods and services are dissimilar. According to the defendant, the goods in class 9 of the trademarks invoked concern customer relationship management (CRM) and billing software, where the goods for which the contested sign has been applied concern software in relation to cryptocurrency. Both goods serve a totally different public or end user. The opponent targets service providers, who want to improve their customer communication and billing systems. By contrast, the defendant states that the contested goods focus on individuals and companies that want to invest in cryptocurrencies.

17. Regarding the services in class 36 of the contested sign, the defendant states that the fact that the trademarks invoked are registered for software that can be used by financial service providers, such as banks, does not mean that the opponent provides financial services. Furthermore, the public and end-users for these services are different. For these reasons, the services in class 36 are not similar to the goods and services of the trademarks invoked.

18. According to the defendant, the trademarks AMDOCS and AMDAX indeed show similarity due to the identical beginning. Nevertheless, the second part is significantly different. The defendant argues that DAX or DOCS will not cause confusion with the general public, especially due to the 'X' in AMDAX. Furthermore, both trademarks are short, making the differences between them more obvious to the consumer. In addition, the second trademark invoked also contains several figurative elements that are not present in the contested sign, including the extra letter A at the beginning. Therefore, the signs are similar to a certain degree or to a low degree.

19. Regarding the aural comparison, the defendant states that though there is some resemblance phonetically, the A and O make the trademarks sound significantly different. For this reason, the signs are aurally similar to a certain degree.

20. The defendant argues that the word AMDOCS has no meaning. According to the defendant, the trademark AMDAX refers to 'Amsterdam Digital Asset Exchange'. The defendant explains that cryptocurrencies are digital assets. In the case of AMDAX, 'AM' refers to Amsterdam and 'DAX' is a representation of 'Digital Asset Xchange', which is an electronic platform that facilitates the trading of digital assets. The defendant also states that the abbreviation DAX is a common term in the cryptocurrency market. Since the trademark AMDOCS does not operate on the crypto market, the defendant argues that consumers will not perceive any conceptual similarity between the signs. As only one of the signs evokes a concept, the defendant concludes that the signs are conceptually dissimilar.

21. The defendant also argues that the relevant public is different. The contested sign targets a specialized public, namely individuals and companies that want to invest in cryptocurrencies. The relevant public of the trademarks invoked is also specialized, namely businesses that want to improve their customer communication and billing systems. CRM systems are of importance for a business, and they are expensive. For this reason, the degree of attention would be rather high when selecting them. This is also the case with the investment in cryptocurrencies as this involves certain financial risks for the consumer. According to the defendant, the degree of attention therefore is very high.

22. Defendant concludes that there is no likelihood of confusion and requests that the Office rejects the opposition, registers the contested sign, and decides that the opponent should bear the costs.

### **III. DECISION**

#### **A. Likelihood of confusion**

23. In accordance with article 2.14 BCIP, the holder of a prior trademark may submit a written opposition to the Office, within a period of two months to be calculated from the publication date of the application, against a trademark which in the order of priority, ranks after its own in accordance with Article 2.2ter BCIP.

24. Article 2.2ter (1) BCIP stipulates insofar as relevant that, *"A trademark shall, in case an opposition is filed, not be registered (...) where: b. because of its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier trademark."*<sup>1</sup>

25. A likelihood of confusion within the meaning of this provision exists if the public may believe that the goods or services designated by that trademark and those covered by the trademark applied for come from the same undertaking or, where appropriate, from undertakings which are economically linked.<sup>2</sup>

26. According to settled case-law of the CJEU, the existence of a likelihood of confusion in the mind of the public must be assessed globally, considering all the relevant circumstances of the individual case, including the degree of similarity between the signs at issue and the goods or services concerned, the degree of recognition of the earlier trademark and the degree of distinctiveness – inherent or acquired through use – of the earlier trademark.<sup>3</sup>

### **Comparison of the signs**

27. To assess the degree of similarity between the conflicting signs, their visual, phonetic, and conceptual similarity should be determined. The comparison must be based on the overall impression given by those signs. In the assessment, the perception of the signs by the average consumer plays a decisive role. The average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details.<sup>4</sup>

28. Although the comparison must be based on the overall impression made by those signs on the relevant public, account must nevertheless be taken of the intrinsic qualities of the signs at issue.<sup>5</sup> The overall impression created in the mind of the relevant public by a complex trademark may, in certain circumstances, be dominated by one or more of its components. Regarding the assessment whether this is the case, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorially, account may be taken of the relative position of the various components within the arrangement of the complex mark.<sup>6</sup>

29. The assessment of the similarity between the signs, regarding the visual, aural and conceptual similarity of the signs, must be based on the overall impression created by them, taking into account, inter alia, their distinctive and dominant components.

30. For reasons of procedural economy, the Office will first compare the contested sign with the first trademark invoked (EU trademark 15184252). The signs to be compared are the following:

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<sup>1</sup> Art. 2.2ter (1)(b) BCIP implements art. 5 (1)(b) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks. A similar provision can be found in art. 8 (1)(b) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark.

<sup>2</sup> CJEU 11 June 2020, C-115/19 P, ECLI:EU:C:2020:469, point 54 (China Construction Bank).

<sup>3</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 57 (Equivalenza) and the case-law mentioned there.

<sup>4</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 58 and the case-law mentioned there (Equivalenza).

<sup>5</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 71 and the case-law mentioned there (Equivalenza).

<sup>6</sup> General Court (EU) 23 October 2002, T-6/01, ECLI:EU:T:2002:261, points 34 en 35 (Matratzen) en 13 December 2007, T-242/06, ECLI:EU:T:2007:391, point 47 (El Charcutero Artesano).

Opposition based on:	Opposition directed against:
AMDOCS	AMDAX

*Visual comparison*

31. The trademark invoked is a purely verbal sign, that consists of one word of six letters: 'AMDOCS'. The contested sign is also a purely verbal sign, consisting of one word of five letters: 'AMDAX'.

32. The length of the signs is nearly the same and both trademark and sign start with the letters AMD. The signs have a different ending, namely OCS and AX. However, this difference is insufficient to take away the overall visual similarity. Three of the five letters of the contested sign are identical to the first part of the trademark invoked, and this similarity is at the beginning. According to established caselaw, the consumer normally attaches more importance to the first part of a sign.<sup>7</sup> Even though it concerns short signs, the different endings will be less striking, as a result of the identical first part.

33. For this reason, the Office finds that the signs are visually similar.

*Phonetic comparison*

34. The trademark invoked concerns one word of two syllables: "AM-DOCS". The contested signs also consists of one word of two syllables: "AM-DAX". The first syllable will be pronounced identically. The second syllable is highly similar, because the pronunciation of the letters 'X' and 'CS' is nearly identical. Therefore, the pronunciation of the second syllable only differs in the vowel in the middle, which is hardly noticeable.

35. In the light of the above, the Office finds that the signs are aurally highly similar.

*Conceptual comparison*

36. Both signs, considered as a whole, have no clear and obvious meaning. The defendant claims that 'AMDAX' consists of a combination of Amsterdam and 'Digital Asset Exchange (see paragraph 20), however the defendant provides no supporting arguments or evidence from which it can be established that the public would be aware of this meaning. Furthermore, the Office finds that the public will interpret the contested sign merely as a fantasy word, since there is no obvious reference to Amsterdam and the abbreviation of 'Digital Asset Exchange' would more likely be 'DAE' and not 'DAX'.

37. In the light of the above, the Office finds a conceptual comparison is not possible.

*Conclusion*

38. The signs are visually similar and aurally highly similar. A conceptual comparison is not possible.

***Comparison of the goods and services***

39. In assessing the similarity of the goods and services concerned, account must be taken of all the relevant factors which characterise the relationship between them. These factors include, inter alia, their

<sup>7</sup> General Court EU 17 March 2004, T-183/02 en T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

nature, their end-users, and their method of use and whether they are in competition with each other or are complementary.<sup>8</sup>

40. Complementarity only exists where the products and/or services are so closely related to each other that one is indispensable or important for the use of the other so that consumers may believe that the same undertaking is responsible for those products.<sup>9</sup>

41. In comparing the goods and services, the goods and services shall be considered in the terms set out in the register and not the actual or intended use.<sup>10</sup>

42. The goods and services to be compared are the following:

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
<p>CI 9 Computer software for customer management, order management, revenue and billing management, service creation and delivery, service and resource management, service fulfillment and provisioning, service support and assurance, digital commerce and advertising management, partner management, and business process management in the communications, utilities, global computer information network, access provider, financial, and application service provider industries; computer software that manages customer, product, service and network information, customer interactions, billing, payment and account information, and network usage data in the communications, utilities, global computer information network, access provider, financial, and application service provider industries.</p>	<p>CI 9 Computer software voor gebruik als een interface voor het programmeren van applicaties (API); Computer software voor de verschaffing van toegang tot marktgegevens; Computer software voor het verschaffen van toegang tot handelsdiensten; voornoemde software uitsluitend voor het gebruik voor diensten op het gebied van cryptovaluta.</p> <p><i>CL 9 Computer software for use as an application programming interface (API); Computer software for providing access to market data; Computer software for providing access to trading services; the aforesaid software exclusively for use for services in the field of cryptocurrencies.</i></p>
<p>CI 35 Business management consulting and advisory services in the field of communications, utilities, global computer information network, access provider, financial, and application service provider industries in connection with business process optimization services, customer management, order management, resources management, service fulfillment and provisioning, digital commerce and advertising management, partner management, and business process management; business management consulting and business management advisory services in the field of computer hardware and software system implementation and integration for</p>	

<sup>8</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 23 (Canon).

<sup>9</sup> General Court (EU) 24 September 2008, T-116/06, ECLI:EU:T:2008:399, point 52 (O STORE).

<sup>10</sup> General Court (EU) 16 June 2010, T-487/08, ECLI:EU:T:2010:237, point 71 (Kremezin).

<p>others; business management consulting and advisory services in the field of revenue and billing management.</p>	
	<p>Cl 36 Financiële en monetaire zaken, waaronder begrepen het beleggen en sparen van gelden; Financiële verzekeringen; Bancaire diensten met betrekking tot cryptovaluta; financiële diensten, te weten in- en verkoop van cryptovaluta; het beheer van financiële portefeuilles; Beheer van investeringen; Beheer van vermogens en investeringen; Beheren van fondsen en investeringen; Diensten voor het beleggen van geld; Diensten voor het beleggen van cryptovaluta; Beleggingsbeheer; Beleggingsadvisering; voornoemde diensten in het bijzonder gericht op cryptovaluta.</p> <p><i>Cl 36 Financial and monetary affairs, including investing and saving money; Financial insurance; Banking services relating to cryptocurrencies; financial services, namely buying and selling of cryptocurrencies; the management of financial portfolios; Investment management; Capital and investment management; Managing funds and investments; Money investing services; Cryptocurrency investing services; Investment management; Investment advice; the aforesaid services in particular aimed at cryptocurrencies.</i></p>
<p>Cl 42 Technical support services, namely, troubleshooting of computer software problems in connection with customer management, order management, revenue and billing management, service creation and delivery, service fulfillment and provisioning, digital commerce and advertising management, partner management, and business process management in the communications, utilities, global computer information network, access provider, financial and application service provider industries.</p>	
	<p>N.B. The original language of this application is Dutch. The translation is only added to improve the readability of this decision.</p>

### Class 9

43. The goods 'Computer software for use as an application programming interface (API); Computer software for providing access to market data; Computer software for providing access to trading services; the aforesaid software exclusively for use for services in the field of cryptocurrencies' of the contested sign



concern computer software that is designated to be used for services involving cryptocurrencies. The goods in class 9 of the trademark invoked concern, inter alia, computer software for business process management in the financial industry. These goods, as well as the other software solutions mentioned in class 9 of the trademark invoked, could also relate to, for example, operations involving cryptocurrencies. These goods could have a similar purpose, such as facilitating financial transactions, and can share the same commercial origin and target the same relevant public. Therefore, the goods are at least similar to a low degree.

#### *Class 36*

44. The Office points out that the word 'in particular', mentioned in class 36 of the contested sign, indicates that the specific services only concern examples, and that protection is not restricted to them. In other words, it introduces a non-exhaustive list of examples.<sup>11</sup>

45. The Office finds that there exists a certain similarity between the services '*Financial and monetary affairs, including investing and saving money; Financial insurance; Banking services relating to cryptocurrencies; financial services, namely buying and selling of cryptocurrencies; the management of financial portfolios; Investment management; Capital and investment management; Managing funds and investments; Money investing services; Cryptocurrency investing services; Investment management; Investment advice*' of the contested sign and the services '*Business management consulting and advisory services in the field of financial industries*' mentioned in class 35 of the trademark invoked. These services may, to some extent, overlap because the services of the opponent will also have to take into account financial and monetary affairs, such as financial risks and insurance. The aforementioned services of the defendant are therefore similar in nature and complementary to the opponent's services in class 35. Furthermore, these services can be offered jointly by the same companies or by companies working closely together, as well as target the same relevant public. The Office therefore finds that the services are at least similar to a low degree.

#### *Conclusion*

46. The goods and services are at least similar to a low degree.

#### **Global assessment**

47. The global assessment must be made by reference to the average consumer, who is reasonably well-informed and reasonably observant and circumspect about the goods or services in question. However, account must be taken of the fact that the average consumer only rarely has the opportunity to make a direct comparison between the different trademarks but relies on the imperfect impression left upon him. It must also be borne in mind that the average consumer's level of attention may vary depending on the type of goods or services at issue.<sup>12</sup> In the present case, the Office agrees with the defendant that the level of attention for the goods and services concerned will be enhanced (see paragraph 21), since it concerns specific software products and for the services involved there is a risk that they may have important financial consequences.

48. The higher the degree of distinctiveness of the earlier trademark, the greater the likelihood of confusion. Trademarks with a highly distinctive character, either by their nature or because of their reputation on the market, enjoy greater protection than trademarks with a weak distinctive character.<sup>13</sup> In

<sup>11</sup> General Court (EU) 9 April 2003, T-224/01, EU:T:2003:107, point 41 (Nu-Tride).

<sup>12</sup> CJEU 22 June 1999, C-342/97, ECLI:EU:C:1999:323, point 26 (Lloyd Schuhfabrik Meyer).

<sup>13</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 18 (Canon).

this case, the trademark invoked has a normal distinctiveness, as it is not descriptive for the goods and services concerned.

49. The opponent claims that the trademark invoked is famous, however this argument is not substantiated (see paragraph 14). A mere reference to the opponent's own website is not enough in this context.

50. The global assessment of the likelihood of confusion presupposes a certain coherence between the factors to be considered and, in particular, between the similarity of the conflicting signs and the goods or services to which they relate. Thus, a low degree of similarity between the goods or services in question may be offset by a high degree of similarity between the signs, and vice versa.<sup>14</sup>

51. In this case, the relevant goods and services are at least similar to a low degree. However, the signs are visually similar and aurally highly similar. On the basis of these and the other factors mentioned above, and considering their interdependence, the Office considers that, notwithstanding the elevated level of attention of the public, there is a likelihood of confusion in the sense that the public may believe that the goods and services designated by the trademark relied on and the goods and services to which the contested sign relates originate from the same undertaking or, as the case may be, from undertakings which are economically linked.

## **B. Conclusion**

52. Based on the foregoing, the Office concludes that there is a likelihood of confusion.

53. Since the opposition is already justified based on the first trademark invoked, it is not necessary to discuss the second trademark invoked.

## **IV. CONSEQUENCE**

54. The opposition with number 2017331 is justified.

55. The Benelux application with number 1444143 will not be registered.

56. The defendant shall pay the opponent 1,045 euros in accordance with article 2.16, 5 BCIP in conjunction with rule 1.28, 3 IR, as the opposition is justified. This decision constitutes an enforceable order pursuant to article 2.16, 5 BCIP.

The Hague, 27 October 2022



Eline Schiebroek  
(*rapporteur*)

Tomas Westenbroek

Willy Neys

Administrative officer: Vincent Munier

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<sup>14</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 59 and the case-law mentioned there. (Equivalenza)